

**This compromise recommendation would require staff to modify Section XII (Sanctions and Enforcement Remedies) before final City Council adoption of the Policy.*

Advisory Committee Recommendation 4:

Determine that changes to the Policy must be proposed by/to the Privacy Advisory Committee and ratified by the City Council and that Privacy policy must be reviewed at least every year by the committee.

Staff Analysis and Recommendation:

Staff supports adopting this recommendation to ensure a thorough and informed discussion about any changes to the DAC or the Policy governing its use. Due to its originally designed capabilities, the DAC could receive a much larger amount of data from the entire City and there were discussions of connecting it to many data sources prior to the March 4, 2014 City Council action. Due to the controversy surrounding the DAC and the lack of a Privacy Policy, this conversation was met with fierce opposition from the community and the current public comments on the Privacy Policy still allude to that opposition. However, there will continue to be other functions that could enhance public safety by adding them to the DAC that are not in the current Policy. For example, if a large building was on fire and the building plans were readily accessible to the DAC staff, they could identify where the gas main is located and help firefighters navigate safely. Because new functions could be identified at any time and the world of technology is ever changing, establishing a process now that requires public discourse into the future is recommended.

Advisory Committee Recommendation 5:

Create a Permanent Standing Advisory Committee to examine the City as a whole and develop an overarching Privacy Policy that would reach beyond the limited scope of the DAC.

Staff Analysis and Recommendation:

Staff supports this recommendation for a number of reasons including those stated above under recommendation #1 regarding a standing committee for the DAC. The City will continue to seek and accept grant funding from the federal and state government to enhance its public safety capabilities. New technology is introduced into the marketplace every year that changes the conversation about how society is monitored. By establishing a Citywide Standing Privacy Committee the City will create a public space and process where this conversation can take place. The City can work in partnership with affected operational staff, privacy experts, and advocates to develop a mutually agreeable process to acquire new technology. The recent debate at the City Council about accepting grant

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funds for the purchase of a Forward Looking Infrared Camera (FLIR) is a good example of how a standing committee could help the City move forward in a consistent, clearly defined, and transparent manner in the future.

Similar to establishing any permanent standing committee, staff would need to return to Council with an Ordinance delineating the Committee's size, scope, and composition. Staff anticipates that the Commission will require about 10-15 staff hours per month to support monthly meetings of the Committee. This support would include: assisting the chairperson in preparing the meeting agenda, developing and distributing the meeting agenda packet and supporting materials, posting meeting notices in accordance with the Brown Act and Sunshine Ordinance, responding to informational requests from Committee members, and developing reports and recommendations to the City Council.

This time would likely be absorbed by exiting staff although it would decrease staff capacity for other items. Depending on the extent of work created for a Privacy Officer (Advisory Committee Additional Recommendation #2), and if that same staff person served as the staff to this Standing Committee, this could have a fiscal impact. The fiscal impact could be a need for more staff to handle this role or other duties in need of reassignment due to increased focus on the privacy role. The City Administrator recommends closely tracking staff time dedicated to these functions and reassessing any increased fiscal impact after 6 months.

Advisory Committee Recommendation 6:

Modify the City's Whistleblower Ordinance to broaden protections and allow for more avenues to file a complaint when there is a DAC policy related potential violation.

Staff Analysis and Recommendation:

The City's current Whistleblower Ordinance was written to be in line with State law regarding a reporting structure and the definition of who can be protected under such laws. The proposed changes from the Advisory Committee are attempting to do three different things:

- a. The Advisory Committee proposes that the Council enact whistleblower type protections for persons who file complaints regarding non-compliance with the policy who are not City of Oakland employees who are covered under existing whistleblower laws. This would allow for volunteers, contractors or other non-city employees to be protected as Whistleblowers. This expands the definition of a Whistleblower beyond state law and at this time the City Administrator has requested the City Auditor evaluate this proposal and City Attorney determine whether it conflicts with state law on whistleblower protection for employees. At this time, the

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- Administration recommends waiting until that further analysis can be completed to ensure the City is not in conflict with State Law.
- b. Allow for complaints to be received by the PEC, the DAC (or other) Privacy Advisory Committee, or the City Auditor. Based on the concerns identified by the PEC about modifying their role and the City's recommendation that a Standing Committee be more broadly defined (and not specific to the DAC) the Administration does not support this recommendation currently. Instead, the sole recipient of Whistleblower complaints should remain the City Auditor. This will maintain a consistent point of entry for complainants and does not preclude a Standing Committee, the PEC, or any other person from referring Whistleblowers to the City Auditor's Office when appropriate.
 - c. Require all managers, supervisors, and department heads to undergo periodic training about whistleblower protections, retaliation, and appropriate methods to address employee concerns. The administration supports this concept and employee protections such as the Whistleblower Ordinance are currently included in a new training series being developed by the Department of Human Resource Management.

Advisory Committee Recommendation 7:

Consider establishing a Citywide Surveillance Technology Ordinance to allow for informed public debate and decision making by the City Council regarding privacy and retention policies for all Surveillance Technologies in the future.

Staff Analysis and Recommendation:

Staff recommends that the development of such an ordinance be the primary body of work for a Permanent Standing Privacy Committee once that Committee has been established and has had a reasonable period to establish itself and monitor adherence to the DAC Privacy Policy. This Committee will initially take some time to create procedures and a regular meeting schedule and it will be responsible for assessing the use of the DAC. It should have the medium-range goal of creating a framework for a Citywide Surveillance Technology Ordinance which could take several months. Developing such an ordinance will require input from the same departments that have been collaborating with the current Advisory Committee but would be much broader in its scope. The net effect would be to recommend an ordinance for adoption by the City Council that would establish a consistent public process by which the City evaluates various technologies *before* acquiring or using them.

Additional Modifications to the Draft Policy since the February 10 PSC Meeting

During the February 10th Public Safety Committee meeting, Council Member Brooks inquired as to whether City Council Members were permitted in the Emergency Operations Center during critical incidents in which the DAC is activated based on the current draft Policy. The Advisory

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Committee discussed this question and decided to add additional language to the Policy that expressly allows for Council Members, the Mayor, and/or their designees to be present during such activations. However, the Committee included a recommendation to exclude the City Attorney from having access to the DAC data during a DAC activation at the EOC.

Staff Analysis

This proposal would not work with the City's Public Safety protocols for EOC activations. City Attorney staff--like other city departments – are required to respond to EOC activations and emergency response situations under the California Emergency Act, Gov. Code § 8550 et seq., and as provided by the City's Standardized Emergency Management System ("SEMS") regulations. During EOC activations Public Safety officials want and request that City Attorney staff report to the EOC to provide legal consultation in the context of a wide range of rapidly evolving scenarios. City Attorney input helps the City carry out its EOC operations in an expeditious and legal manner. Denying the City Attorney staff access to DAC data would hinder their ability to render legal advice to City staff on matters of DAC policy compliance and related legal issues. Moreover, the Oakland City Charter is Oakland's constitution and Section 401(6) of the Charter designates the City Attorney as the legal advisor to the Mayor, City Council, and each and every department of the City. The City Attorney advises all officers, boards, commissions, and other agencies of the City on legal matters. Accordingly, the City Attorney cannot be denied access to DAC data or any other information that is relevant or necessary to the provision of legal services.

Staff Recommendation

Staff recommends adding the words "City Attorney" to section VII to the draft policy before final adoption by the City Council.

ITD Staff worked closely with the committee to make other modifications to the current draft Policy to provide more clarity regarding the definition of a Bookmark, the access vendors would have to the system and its components, and other minor revisions. The current draft (*Attachment D*) contains all of the above mentioned changes.

Additional Concerns

The Police Department has expressed two unresolved primary concerns with the current Policy that will need continued monitoring:

The first concern expressed by the Police Department is the desire to potentially need to monitor a protest (Protected Activity) when it occurs at the Port. Although the Advisory Committee wrote an exception clause that allows monitoring of Protected Activity when there is a reasonable suspicion of criminal wrongdoing, the Police Department would like to be able to monitor such activity even when there is no reasonable suspicion. They have indicated that protests often lead to criminal activity that the department would not have had a reasonable suspicion that such activity would occur.

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